

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**
1400 Eye Street, N.W.
Suite 450
Washington, D.C. 20005

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) seeks the release of records provided to defendant U.S. Department of Justice (“DOJ”) by the House Ethics Committee (then known as the House Committee on Standards of Official Conduct) concerning the committee’s investigation of the use by then-House Speaker Newt Gingrich of charitable tax-exempt organizations to underwrite political activities, and his false statements to Congress. Plaintiff is statutorily entitled to the disclosure of the records it seeks. Notwithstanding that entitlement, defendant has improperly withheld the requested records.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 2201(a) and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff CREW is a non-profit, non-partisan corporation organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and agencies and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of its research, CREW uses government records made available to it under the FOIA.

4. Defendant DOJ is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 702. DOJ is the federal agency with possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request. The Criminal Division is a component of defendant DOJ.

Plaintiff's FOIA Request

5. By letter dated January 25, 2012, and delivered by facsimile on that date to the Criminal Division, plaintiff requested under the FOIA copies of all records provided to the Criminal Division between 1996 and 1997 by the House Ethics Committee, then known as the

House Committee on Standards of Official Conduct, relating to the committee's investigation of the use by then-House Speaker Newt Gingrich of charitable tax-exempt organizations to underwrite political activities, and Mr. Gingrich's false statements to the committee. CREW also requested records reflecting how DOJ responded to the evidence provided to it by the House Ethics Committee.

6. The Criminal Division received plaintiff's FOIA request described in ¶ 5 by facsimile on January 25, 2012.

7. In its January 25, 2012 letter to the Criminal Division, plaintiff also requested expedited processing of its FOIA request. Plaintiff's request for expedition conformed with the requirements for such requests set forth in defendant DOJ's regulations. Plaintiff described how its FOIA request met the criteria for expedited processing under DOJ's regulations, specifically (1) how there is a particular urgency to inform the public about the extent to which DOJ followed up on the substantial body of evidence developed by the House Ethics Committee concerning Mr. Gingrich's use of charitable tax-exempt organizations to underwrite political activities and his false statements to Congress; and (2) the request is made by an entity engaged primarily in disseminating information.

8. By letter dated January 25, 2012, and sent by facsimile on that date to Tracy Schmalzer, Director of DOJ's Office of Public Affairs, CREW also requested expedition in light of the widespread and exceptional media interest in the subject of its FOIA request. As DOJ regulations require, CREW explained the nature of that media interest and certified the basis for CREW's request for expedition is true and correct to the best of its knowledge and belief.

9. DOJ's Office of Public Affairs received CREW's letter described in ¶ 8 on January 25,

2012.

Defendant's Treatment of Plaintiff's FOIA Request

10. Neither the Criminal Division nor the Office of Public Affairs responded to CREW's request for expedition. Instead, by letter to plaintiff dated February 13, 2012, the Criminal Division acknowledged receipt of plaintiff's FOIA request and assigned it file number 201200080F. The Criminal Division's letter further stated without express authorization and consent of "the third party" – presumably Mr. Gingrich – any release of information to plaintiff would violate the Privacy Act. In addition, the Criminal Division asserted the requested records are exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(6) and (7)(c). The Criminal Division advised plaintiff of its right to appeal that determination to DOJ's Office of Information Policy ("OIP").

11. By letter to OIP dated February 15, 2012 and sent by facsimile on that date, plaintiff appealed the determination of the Criminal Division to withhold in their entirety all records responsive to plaintiff's FOIA request. As plaintiff explained, by refusing at the outset to process any aspect of CREW's FOIA request, the Criminal Division failed to meet its most basic obligations under the FOIA. Further, the reliance by the Criminal Division on the Privacy Act is in error given the express acknowledgment in the Privacy Act that where the FOIA requires disclosure, the Privacy Act is not a bar to that disclosure. 5 U.S.C. § 552(a)(b)(2). Also improper is the Criminal Division's reliance on Exemptions 6 and 7(C), as the records CREW seeks unquestionably would inform the public about what government leaders were up to, and would shed light on DOJ's conduct in conducting an investigation of Mr. Gingrich and failing to bring any charges against him. These public interests clearly outweigh any privacy interests of

Mr. Gingrich.

12. By letter to plaintiff dated March 1, 2012, OIP acknowledged receipt of plaintiff's appeal described in ¶ 11 and assigned it appeal number AP-2012-01447. OIP's letter stated inaccurately that plaintiff's appeal was received on February 28, 2012, rather than February 15, 2012, as documented by plaintiff's facsimile transmittal sheet.

13. By letter to OIP dated March 5, 2012, plaintiff advised OIP of its error in stating OIP had received plaintiff's appeal on February 28, 2012..

14. By letter to plaintiff dated March 12, 2012, OIP stated it was "denying [plaintiff's] request for expedited treatment of [its] appeal," as plaintiff had failed to satisfy DOJ's standards for expedition.

15. By letter to OIP dated March 13, 2012, plaintiff explained OIP's letter of March 12, 2012 was in error, as plaintiff had not sought expedition of its appeal described in ¶ 11.

16. To date, defendant has not issued a determination on plaintiff's administrative appeal, notwithstanding the passage of significantly more than the 20 business days in which the FOIA requires agencies to make a determination on any appeal.

17. Plaintiff has exhausted all applicable administrative remedies.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongfully Withholding of Agency Records

18. Plaintiff repeats and re-alleges paragraphs 1-17.

19. Defendant DOJ has wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for rendering its decision on plaintiff's appeal of

the response of the Criminal Division to plaintiff's FOIA request.

20. Defendant DOJ has wrongfully withheld agency records requested by plaintiff by withholding from disclosure all records responsive to plaintiff's FOIA request to the Criminal Division.

Requested Relief

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Order defendant DOJ and its component the Criminal Division to disclose immediately and in their entireties all records responsive to plaintiff's FOIA request submitted to the Criminal Division on January 25, 2012;
- (2) Issue a declaration that plaintiff is entitled to disclosure of the requested records;
- (3) Provide for expeditious proceedings in this action;
- (4) Award plaintiff its costs and reasonable attorneys' fees in this action; and
- (5) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



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Dated: June 19, 2012